

Message Text

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TO SECSTATE WASHDC 3729

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AMCONSUL ROTTERDAM BY POUCH

AMCONSUL AMSTERDAM BY POUCH

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E.O. 11652: N/A

TAGS: EFIN, NL

SUBJECT: DUTCH REGULATION OF FOREIGN BROKERS

REF: STATE 79749

SUMMARY: THIS MESSAGE (BEING TRANSMITTED ALSO IN BEHALF OF AMCONSUL AMSTERDAM) REVIEWS DUTCH REGULATION OF THE SECURITIES INDUSTRY, PARTICULARLY AS IT EFFECTS THE ACTIVITIES OF FOREIGN BROKERS IN THE NETHERLANDS END SUMMARY

BEGIN UNCLASSIFIED:

1. THE SECURITIES INDUSTRY IN THE NETHERLANDS IS ESSENTIALLY CONTROLLED BY THE SECURITIES EXCHANGE ASSOCIATION (VERENIGING VOOR DE EFFECTENHADEL), A LARGELY AUTONOMOUS, SELF-REGULATING BODY COMPOSED OF PRIVATE MEMBERS. TECHNICALLY, THE MINISTER OF FINANCE HAS AUTHORITY TO CONTROL THE SECURITIES INDUSTRY UNDER THE STOCK EXCHANGE ACT OF 1914, BUT THE POWERS GRANTED THE MINISTER UNDER THAT ACT ARE IN PRACTICE USED ONLY UNDER EMERGENCY CONDITIONS (SUCH AS ORDERING THE EXCHANGE CLOSED), WITH THE NOTABLE EXCEPTION THAT THE MINISTER RETAINS ON A DAY-TO-DAY BASIS THE FINAL AUTHORITY TO APPROVE LISTINGS ON THE EXCHANGE. THE MINISTERIAL DECREEE OF 1947, WHICH IS STILL IN LIMITED OFFICIAL USE

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FORCE, PERMITS THE TRADING OF SECURITIES IN THE NETHERLANDS ONLY

IF EFFECTED THROUGH A MEMBER OF THE VERENIGING. THE VERENIGING'S AUTONOMOUS CHARACTER AND THE MINISTERIAL DECREE OF 1947 THEREFORE CONCENTRATE IN THE VERENIGING THE POWER TO REGULATE AND CONTROL VIRTUALLY ALL ASPECTS OF THE SECURITIES INDUSTRY IN THE NETHERLANDS (EVEN THOUGH THE MINISTER OF FINANCE RETAINS FINAL AUTHORITY TO APPROVE LISTINGS ON THE EXCHANGE, HIS APPROVAL IS ESSENTIALLY PRO-FORMA AFTER RECEIVING THE RECOMMENDATION OF THE VERENIGING).

2. THE FUNCTIONING OF THE VERENIGING IS GOVERNED BY ITS ARTICLES OF ASSOCIATION. THE ARTICLES OF ASSOCIATION WERE REVISED WITH EFFECT FROM JANUARY 1, 1973. ACCOMPANYING REGULATIONS GOVERNING OPERATIONS (TRADING ACTIVITIES, COMMISSIONS, ETC.) HAVE ALSO BEEN REVISED. COPIES WILL BE POUCHED TO DEPT. AVAILABLE ONLY IN DUTCH).

2. MEMBERSHIP IN THE VERENIGING

REGULATIONS OF THE NETHERLANDS STOCK EXCHANGE ASSOCIATION PROVIDE FOR TWO FORMS OF MEMBERSHIP: BEDRIJFSLID (MEMBER FIRM) AND BEURSLID (PERSONAL MEMBER). A MEMBER FIRM CAN BE EITHER A NATURAL PERSON OR A COMPANY (PARTNERSHIP OR CORPORATION) WHOSE PRINCIPAL BUSINESS OR A SIGNIFICANT PORTION THEREOF MUST BE IN SECURITIES BROKERAGE OR DEALING. THREE DIFFERENT TYPES OF MEMBERSHIP AS A BEDRIJFSLID (MEMBER FIRM) ARE POSSIBLE: (A) BROKER-DEALERS, (B) JOBBERS, AND (C) CREDIT INSTITUTIONS REGISTERED WITH THE CENTRAL BANK (IE, BANKS). A PERSONAL MEMBER (BEURSLID) IS A NATURAL PERSON WHO MUST HAVE MEMBERSHIP AS A "FIRM" IN HIS OWN RIGHT, OR WHO IS ASSOCIATED WITH AND DESIGNATED BY A "MEMBER FIRM" TO EXERCISE THE FUNCTIONS OF A PERSONAL MEMBER IN THE MEMBER FIRM'S BEHALF. ONLY PERSONS HAVING "PERSONAL MEMBER" STATUS HAVE ACCESS TO THE FLOOR OF THE AMSTERDAM STOCK EXCHANGE, THE ONLY SECURITIES EXCHANGE IN THE NETHERLANDS. THE TOTAL NUMBER OF PERSONAL MEMBERS WHICH MAY REPRESENT A GIVEN MEMBER FIRM IS ROUGHLY EQUAL TO THE NUMBER OF MANAGERS ON THE MEMBER FIRM'S BOARD OF MANAGEMENTS.

3. REQUIREMENTS FOR MEMBERSHIP: NATIONALITY AND INDEPENDENCE

(A) NATIONALITY OF A BEDRIJFSLID (MEMBER FIRM)
A NATURAL PERSON WHO WISHES TO QUALIFY FOR MEMBERSHIP AS A "MEMBER FIRM" (BEDRIJFSLID) MUST POSSESS DUTCH NATIONALITY AND LIMITED OFFICIAL USE

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MUST HAVE HIS/HER PRINCIPAL PLACE OF RESIDENCE IN THE NETHERLANDS (RESIDENCE IN THIS CONTEXT IMPLIES ACTUAL PHYSICAL PRESENCE). OF A BEDRIJFSLID IS A PARTNERSHIP OR A LIMITED LIABILITY COMPANY, THE FIRM MUST BE ESTABLISHED ACCORDING TO DUTCH LAW (EG, IF A BANK, IT MUST BE REGISTERED WITH THE CENTRAL BANK) AND A MAJORITY OF THE MANAGING PARTNERS OR COMPANY MANAGERS MUST BE DUTCH NATIONALS. IN ADDITION, AT LEAST ONE OF THE DIRECTORS OF THE COMPANY MUST BE A DUTCH NATIONAL. THERE IS NO REQUIREMENT

THAT THE FIRM BE DUTCH-OWNED. (HOWEVER, A FOREIGN FIRM ESTABLISHED UNDER THE LAWS OF A FOREIGN COUNTRY IS NOT ELIGIBLE FOR MEMBERSHIP).

(B) INDEPENDENCE OF MEMBER FIRMS

THE ASSOCIATION'S REGULATIONS REQUIRE THAT MEMBER FIRMS BE INDEPENDENT OF EACH OTHER AND INDEPENDENT OF FIRMS NOT ELIGIBLE FOR MEMBERSHIP (IE, OF FOREIGN FIRMS OR FIRMS WHICH CANNOT QUALIFY FOR MEMBERSHIP AS BROKERS, JOBBERS, OR BANKS) THE BASIC TEST FOR INDEPENDENCE IS OWNERSHIP. IF NOT MORE THAN 10PER CENT OF A MEMBER FIRM IS OWNED BY ANOTHER MEMBER FIRM OR BY AN INELIGIBLE FIRM, THE MEMBER FIRM IS CONSIDERED TO BE "INDEPENDENT". IF OWNERSHIP OF A MEMBER FIRM BY ANOTHER MEMBER FIRM OR BY AN INELIGIBLE FIRM IS GREATER THAN 10 PERCENT BUT NOT MORE THAN 25 PERCENT, THE MEMBER FIRM MUST SO NOTIFY THE ASSOCIATION. IN THIS CASE THE MEMBER FIRM RETAINS ITS STATUS PROVIDED THE ASSOCIATION IS SATISFIED THAT THE SECURITIES-RELATED ACTIVITES OF THE RELATED FIRMS ARE CONDUCTED INDEPENDENTLY OF EACH OTHER. A FIRM WHOSE OWNERSHIP BY AN INELIGIBLE FIRM OR BY A BEDRIJFSLID EXCEES 25 PERCENT IS PRIMA FACIA INELIGIBLE FOR MEMBERSHIP, BUT MAY MAKE APPLICATION FOR MEMBERSHIP TO THE ASSOCIATION, WHICH WILL CONSIDER THE APPLICATION ON ITS INDIVIDUAL MERITS (PROVIDING OTHER MEMBERSHIP

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CRITERIA ARE SATISFIED). A BEDRIJFSLID MAY ENJOY ONLY ONE OF THE THREE TYPES OF POSSIBLE MEMBERSHIP--BANK, BROKER-DEALER, OR

JOBBER.

4. FOREIGN FIRMS IN THE NETHERLANDS WHICH CANNOT SATISFY THE ABOVE REQUIREMENTS FOR MEMBERSHIP IN THE ASSOCIATION MAY NEVERTHELESS BE RECOGNIZED BY IT AS "CORRESPONDENTEN", A SORT OF ASSOCIATE MEMBERSHIP. THIS ASSOCIATE STATUS IS ACCORDED NOT TO THE DUTCH BRANCH OF THE FOREIGN FIRM, BUT TO ITS MANAGER ON A PERSONAL BASIS . THE BRANCH MANAGER MUST BE PROFESSIONALLY QUALIFIED AS A BROKER.

5. FOREIGN BROKERS IN THE NETHERLANDS

(A) THERE ARE AT PRESENT A NUMBER OF FOREIGN FIRMS WITH OFFICES ESTABLISHED IN THE NETHERLANDS. IN ALL CASES THEY ARE EITHER AMERICAN OR JAPANESE (SEE LISTING IN PARA 6). NONE OF THE AMERICAN HOUSES AND, TO OUR KNOWLEDGE, NONE OF THE JAPANESE FIRMS, IS ELIGIBLE FOR MEMBERSHIP IN THE ASSOCIATION UNDER THE CRITERIA DESCRIBED ABOVE. HOWEVER ALL THE AMERICAN FIRMS ENJOY "ASSOCIATE" MEMBERSHIP ("CORRESPONDENTEN") WHICH ENTITLES THEM TO DEAL

IN SECURITIES THROUGH ESTABLISHED BORKERS (BEDRIJFSLEDEN) ONLY AND TO SHARE THE APPROPRIATE COMMISSIONS TO WHICH A MEMBER FIRM IS ENTITLED.

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AMERICAN FIRMS, AS PRESENTLY CONSTITUTED IN THE NETHERLANDS, ARE ENGAGED PRIMARILY IN PLACING ORDERS IN THE US MARKETS FOR NETHERLANDS BANKS OR BROKERS. (A TYPICAL TRANSACTION MAY BE AS FOLLOWS: A DUTCH INVESTOR ORDERS AMERICAN SHARES FROM HIS DUTH BANK; THE BANK CONTACTS THE NETHERLANDS OFFICE OF A US BROKER, WHO PLACES THE ORDER THROUGH HIS FIRM IN NEW YORK; THE NEW YORK FIRM PURCHASES THE SHARES AND CREDITS THE US ACCOUNT OF THE DUTCH BANK; THE DUTCH BANK ISSUES A BEARER CERTIFICATE OR CREDIT MEMORANDUM TO ITS CLIENT-DEPENDING ON WHETHER THE SHARE IS LISTED OR UNLISTED--AND PAYS THE NETHERLANDS OFFICE OF THE US FIRM THE RELEVANT COMMISSION.) WHILE THE US BROKERS IN THE NETHERLANDS OPERATE THROUGH REPRESENTATIVE OFFICES, THE JAPANESE FIRMS ARE CONSTITUTED AS BANKS AND ARE SO RECOGNIZED BY THE CENTRAL BANK. THE JAPANESE FIRMS THEREFORE HAVE AN ADVANTAGE IN THAT THEY CAN DEAL IN FOREIGN EXCHANGE, WHILE THE AMERICAN FIRMS CANNOT. HOWEVER, TO A LARGE EXTENT, THE US FIRMS DO NOT COMPETE WITH THE JAPANESE FIRMS SINCE THEY DEAL IN THE MAIN IN SHARES ON THE NEW YORK AND TOKYO EXCHANGES RESPECTIVELY.

(B) ALTHOUGH WE ARE NOT AWARE THAT THERE ARE ANY FOREIGN BROKERS OPERATING IN THE NETHERLANDS OTHER THAN AMERICANS AND JAPANESE FIRMS, WE UNDERSTAND THAT A COUPLE OF BRITISH BANKS (INCLUDING LLOYDS) HAVE ENTERED THE DUTCH SECURITIES MARKET THROUGH THE ACQUISITION OF SMALL DUTCH COMMERCIAL BANKS WHICH WERE ALREADY MEMBERS OF THE STOCK EXCHANGE ASSOCIATION. SOURCES AT THE ASSOCIATION INFORM US THAT AT PRESENT THE ROSTER OF "BEURSLDEN" (PERSONAL MEMBERS) INCLUDES ONE BRITISH SUBJECT (NON-DUTCH) WHO REPRESENTS ONE OF THE BRITISH-CONTROLLED DUTCH

BANKS WHILE SEVERAL US BANKS ARE REPRESENTED IN THE NETHERLANDS, THEY CANNOT ENGAGE IN SECURITIES BROKERAGE BECAUSE OF US REGULATIONS END UNCLASSIFIED

BEGIN LOU

(D) POSITION OF AMERICAN BROKERS: WHILE (WITH ONE OR TWO EXCEPTIONS) THE AMERICAN BROKERAGE FIRMS IN THE NETHERLANDS HAVE BEEN HAVING LEAN TIMES IN THE LAST COUPLE OF YEARS, THEIR MODEST PERFORMANCE IS ATTRIBUTABLE MAINLY TO CONDITIONS IN THE US MARKET RATHER THAN TO RESTRICTIONS ON THEIR OPERATIONS. MOST OF THEM APPEAR TO BE SATISFIED WITH THEIR PRESENT SET-UP SINCE GAINING ACCESS TO THE DUTCH MARKET WOULD REQUIRE THEM TO REORGANIZE AND EXPAND THEIR STAFFS. THERE IS ONLY ONE EXCHANGE IN THE NETHERLANDS - THE AMSTERDAM STOCK EXCHANGE - LIMITED OFFICIAL USE

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WHICH HAS LIMITED BREADTH AND DEPTH. TRADING OUTSIDE THE EXCHANGE IS ALSO LIMITED. ACCESS TO THE EXCHANGE (MEMBERSHIP ON THE ASSOCIATION) IS THEREFORE NOT CONSIDERED VERY IMPORTANT AT PRESENT. HOWEVER, CHANGES IN THE US SECURITIES INDUSTRY, PARTICULARLY CONCERNING NEGOTIABLE COMMISSIONS, MAY HAVE IMPLICATIONS FOR THE VIABILITY OF THE DUTCH BRANCHES OF AMERICAN BROKERAGE FIRMS. ALREADY A COUPLE OF THEM ARE CONSIDERING THE MERITS OF ENTERING THE DUTCH MARKET IN THE SAME WAY THE BRITISH BANKS HAVE, THAT IS, THROUGH THE ACQUISITION OF SMALL DUTCH BANKS WHICH ARE MEMBERS OF THE ASSOCIATION. HOW THE DUTCH WOULD REACT UNDER THOSE CIRCUMSTANCES WOULD TO A LARGE EXTENT DEPEND ON US TREATMENT OF DUTCH BROKERS. DUTCH BROKERS CAN GAIN PRACTICAL ACCESS TO THE US MARKET THROUGH REGIONAL EXCHANGES IN THE US, A TECHNIQUE NOT AVAILABLE TO AMERICAN FIRMS IN THE NETHERLANDS. OF COURSE, THE RECIPROCAL GRANTING OF ACCESS WOULD BENEFIT DUTCH FIRMS IN THE US SUBSTANTIALLY MORE THAN IT WOULD US FIRMS IN THE NETHERLAND. END LOU.

6. US FIRMS WITH OFFICES IN THE NETHERLANDS:

A BACHE

B BAKER, WEEKS

C BEAR, STEARNS

D DREXEL BURNHAM

E H. HENTZ

F HERZFIELD & STERN

G HORNBLOWER & WEEKS

H MERRILL LYNCH

I JESUP & LAMONT

7. JAPANESE BROKERS REPRESENTED IN THE NETHERLANDS:

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A DAIWA

B NOMURA

C YAMAICHI

D KANGYO

GOULD

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